UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/74/Add.1
22 December 1993

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1992

Addendum

REPUBLIC OF SLOVENIA

[1 October 1993]

GE.93-87037 (E)

Introduction

1. Pursuant to the provisions of article 40 of the International Covenant on Civil and Political Rights, which came into force in the Republic of Slovenia on 25 June 1991, the Republic of Slovenia, as a party to this Covenant, hereby submits its initial report on measures taken for the realization of rights recognized in this Covenant, as well as on the successes which it has obtained in their realization.

2. The report is composed in accordance with the guidelines which the Committee for Human Rights adopted in respect of the form and content of initial reports (CCPR/C/5/Rev.1 of 30 September 1991 and HRI/1991/1 of 27 February 1991)*.

I. ARTICLES 1 TO 27 OF THE COVENANT

General

3. The Constitution of the Republic of Slovenia of 1991 carries a special chapter which relates to human rights and basic freedoms (arts. 14-65). 1/ It is clear from these constitutional provisions that many of the human rights and basic freedoms are literally or in spirit taken from the International Covenant on Civil and Political Rights.

4. On the proclamation of the Republic of Slovenia as an independent state (June 1991), the country did not have its own complete legislation. For this reason Slovenia still makes use of legislation from the former Yugoslavia, which ratified the International Covenant on Civil and Political Rights (but not the Optional Protocol) in 1971. The Yugoslav legislation was therefore for the most part in line with the International Covenant on Civil and Political Rights. The Constitutional Law on the Implementation of the Constitution of the Republic of Slovenia determines that all regulations must be harmonized by the end of 1993. Since the human rights and basic freedoms guaranteed in the Constitution are realized directly on the basis of the Constitution, those provisions of current legislation which are contrary to the Constitution are not, or rather should not be, used in practice. This also holds for those provisions of current legislation which are at variance with the International Covenant on Civil and Political Rights, since according to the Constitution, ratified international agreements take precedence over internal legislation. The Constitution also determines that laws and other regulations must accord with the generally valid principles of international law and with international agreements which bind Slovenia, and also that ratified and published international agreements are used directly.

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* For the core document submitted by the Government of Slovenia in accordance with the consolidated guidelines for the initial part of the reports of States parties, see document HRI/CORE/1/Add.35.

1/ The text of these provisions of the Constitution is available for consultation in the archives of the secretariat.

5. In the Republic of Slovenia there exist general conditions for the establishing of human rights and basic freedoms, such as: a State based on the rule of law, political pluralism and parliamentary democracy. In spite of certain deficiencies and problems in the functioning of the State based on the rule of law, it is not possible to claim that in our country any of the human rights and basic freedoms guaranteed in the Constitution and the International Covenant on Civil and Political Rights are seriously, systematically or frequently violated. The level of respect for human rights in the Republic of Slovenia is comparable with that in any member State of the Council of Europe, something supported by the findings of various representatives of other countries as well as bodies of the Council of Europe and the United Nations. For this reason we are not providing information in this report on progress achieved in the implementation of each individual right recognized in the International Covenant on Civil and Political Rights. There is talk of difficulties in the enjoyment of individual rights only in those provisions of the Covenant where set problems exist.

Article 1

6. The Slovene people achieved their right to self-determination in 1991. On the proclamation of independence of the Republic of Slovenia, the Parliament passed a special constitutional law which determines inter alia that "in the territory of the Republic of Slovenia those international agreements are valid which were drawn up with Yugoslavia and which relate to the Republic of Slovenia".

Article 2

7. This provision of the Covenant is embodied in article 14 of the Constitution.

8. The entire legislation of the Republic of Slovenia is based on the principle of the equality of all people, without any kind of discrimination, although as a rule this is not specially emphasized in individual laws, since equality is believed to be self-evident.

9. Legislation which is valid in the territory of the Republic of Slovenia facilitates the possibility of complaint for anyone who claims to have suffered violation of rights recognized in this Covenant, irrespective of who violated these rights. This means that the right to complain of violations of these rights is also guaranteed in cases where they have been violated by an official while performing official duties. Judicial protection, along with protection before the constitutional court, is guaranteed for any violation of human rights. In this way an assurance is given that every justified complaint will be dealt with favourably.

Article 3

10. The entire legislation of the Republic of Slovenia guarantees to men and women equal enjoyment of all state and political rights. Women are not subject to discrimination, either in current legislation or in practice, in respect of any of the civil or political rights recognized in the Covenant.

Article 4

11. This provision of the Covenant is paraphrased in article 16 of the Constitution.

12. Even during the aggression which the Yugoslav Army perpetrated at the end of June 1991, the Republic of Slovenia placed no curbs on human rights and basic freedoms recognized in the Constitution and this Covenant.

Article 5

13. The Constitution of the Republic of Slovenia determines (art. 15) that human rights and basic freedoms may only be limited by the rights of others and in such cases as determined by the Constitution. The Constitution also determines that "it shall not be permissible to restrict any human right or basic freedom exercisable by legal acts valid in Slovenia on the basis that this Constitution does not recognize that right or freedom or only recognizes it to a limited extent". By "legal acts" in the sense of this constitutional provision are meant ratified and officially published international agreements, which are applied directly in the Republic of Slovenia.

Article 6

14. In the territory of the Republic of Slovenia no death sentence has been passed for over 30 years. In 1990, with a change to the Constitution of that time, the death penalty was formally abolished in the Republic of Slovenia. The new Constitution of 1991 also determines that "human life is inviolable", and that "there shall be no capital punishment in Slovenia" (art. 17).

15. The unlawful taking of life is sanctioned in the Penal Code as a criminal act. The criminal act of genocide is also specifically sanctioned. In accordance with the Convention on the Prevention and Punishment of the Crime of Genocide, there is no statute of limitation for prosecutions against the crime of genocide.

Article 7

16. The right under this provision of the Covenant has been passed in identical wording into the Constitution of the Republic of Slovenia (art. 18).

17. On 15 April 1993 the National Assembly of the Republic of Slovenia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the United Nations had adopted on 10 December 1984. It also issued a statement, in accordance with section 1 of article 21 of the Convention, that Slovenia recognizes the jurisdiction of the Committee against Torture, that it accepts and deals with those reports in which an individual State claims that another member State is not fulfilling its obligations and, in accordance with section 1 of article 22 of the Convention, it recognizes responsibility for accepting and dealing with communications which it receives from individuals who claim to be victims of the violation of provisions of the Convention on the part of an individual member State.

Article 8

18. Every form of slavery and trading in slaves in the Republic of Slovenia is sanctioned in the Republic of Slovenia as a special criminal act.

19. The Constitution of the Republic of Slovenia (art. 49, sect. 4) also expressly forbids forced labour.

20. The currently valid criminal legislation has no penal sanction of "prison with forced labour" among the sanctions which may be handed down by the courts.

Article 9

21. All the rights under this provision of the Covenant are guaranteed in the Constitution (arts. 19, 20 and 30).

22. The removal of freedom and the prescribing of detention are defined in more detail in the Law on Criminal Procedure. Reasons for detention are as follows: suspicion of escape, threat of re-offence and the danger of collusion. There is no obligatory detention during investigation. Detention during investigation is limited to six months, but after the submission of an indictment there is no time limit. After the handing down of the sentence, detention is mandatory if a sentence of five or more years in prison is given.

23. According to the draft of the new Law on Criminal Procedure, detention would also be limited in time after the submission of an indictment (to two years), and there would no longer be mandatory detention after the handing down of a sentence of five or more years in prison.

24. "The shortest time" in the sense of article 9.3 of the Covenant is defined in the Law on Criminal Procedure with the words "without delay", or rather that this time should be no longer than 24 hours.

25. Detention can only be decreed by a court (the investigating judge in the investigation or the senate of judges following the submission of an indictment). The appropriate court must decide on an appeal against a decree of detention within 48 hours. According to the currently valid law the internal affairs authorities may also prescribe detention up to three days, although these provisions of the law are no longer applied in practice, since they are at variance with the provision of article 20, section 1 of the Constitution.

26. The Law on Criminal Procedure also deals in more detail with the procedure for exercising rights to compensation in cases of unlawful removal of freedom and of detention. Compensation is demanded from the Ministry of Justice. If an agreement cannot be reached in respect of the level of compensation, the right to compensation can be realized in court.

Article 10

27. The provision of article 10.1 of the Covenant is embodied in article 21 of the Constitution.

28. Respect for the dignity and personality of an individual whose freedom has been taken away is also guaranteed in the provisions of the Law on Criminal Procedure (in respect of detainees) and in the Law on the Execution of Penal Sanctions (in respect of those convicted). Any treatment which harms the dignity and personality of a detainee or convicted person is forbidden.

29. The rights and obligations stemming from the provisions of articles 10.2 and 10.3 of the Covenant are also appropriately ordered in the Law on Criminal Procedure and the Law on the Execution of Penal Sanctions.

30. Those charged with an offence who are in detention are separated from those who are convicted and serving a sentence. If the court pronounces a sentence of imprisonment, a convicted person who has been in detention prior to the legal enforcement of the sentence may be transferred to an institution of correction, if the convicted person so requests and if the court consents.

31. Accused juveniles held in detention are separated from adult detainees. The Law on Criminal Procedure currently in force provides for one exception according to which a juvenile offender may be detained together with adults in cases when his isolation might last for a long period; in such cases the possibility is provided for a minor to be detained together with an adult who will not exert a negative influence on him.

Article 11

32. Under the legislation in force in the Republic of Slovenia, no one can be deprived of his freedom for not having fulfilled his contractual obligations.

Article 12

33. This provision of the Covenant is reflected in article 32 of the Constitution. The rights under this provision of the Covenant are enshrined in several Acts referring to residence and movement, passports and foreigners. The restrictions of these rights which are permissible in the sense of article 12, paragraph 3 of the Covenant are defined by the Law on Foreigners and the Border Control Act and refer only to foreigners.

34. In accordance with the Border Control Act the prohibition or refusal of entry of a foreigner into the country is possible only for reasons of public order. The Law on Foreigners provides for a possible refusal of a foreigner's entry into the country only for explicitly stipulated reasons (if the foreigner has been expelled or removed from the country or his staying in the country is not permitted as a measure of precaution, for the time of the validity of the measure; if the foreigner arrives from regions where infectious or epidemic diseases are raging and he has no evidence of vaccination; etc.).

35. In accordance with article 13 of the Constitution of the Republic of Slovenia, foreigners shall, in accordance with international agreements, enjoy all rights which are guaranteed by the Constitution and by the law, with the exception of those rights which only citizens of Slovenia may enjoy pursuant to the Constitution and the law.

36. The Republic of Slovenia is currently giving shelter to a large number of temporary refugees (over 70,000), who fled to our country from the war in Bosnia and Herzegovina, which has been raging for more than a year. Such a large number of refugees cannot, for reasons of public order, be granted the full right to free movement and free choice of residence in our country.

Article 13

37. A foreigner who is lawfully in the territory of the Republic of Slovenia may be expelled on the basis of a court ruling, if he or she has been convicted of a criminal offence and if a sanction of expulsion from the country has been pronounced. The foreigner always has the right to appeal against such a sanction.

38. In accordance with the Law on Foreigners the administrative authority for internal affairs may revoke the right to residence of a foreigner only for reasons which are enumerated expressly in the law. This law also provides for the forced removal of a foreigner from the country, if the foreigner is residing illegally in the Republic of Slovenia or has been resident in the Republic of Slovenia for longer than has been allowed in the permit issued by the administrative authority for internal affairs.

39. Under conditions which are determined in the Law on Offences, a foreigner who commits an offence may also face the security measure of removal from the country.

40. In all these cases, foreigners are guaranteed judicial protection.

Article 14

41. The rights under this article of the Covenant are embodied in several provisions of the Constitution:

The rights under article 14.1 are paraphrased in articles 22, 23 and 24 of the Constitution;

The rights under article 14.2 are paraphrased in article 27 of the Constitution;

The (most important) rights under article 14.3 are embodied in article 29 of the Constitution;

The rights under article 14.5 are embodied in article 25 of the Constitution;

The rights under article 14.6 are embodied in article 30 of the Constitution;

The rights under article 14.7 are embodied in article 31 of the Constitution.

42. The above rights, as well as those under article 14.4 of the Covenant, which are not specifically guaranteed in the Constitution, are ordered in greater detail in numerous provisions of the Law on Criminal Procedure. All the provisions of the Law on Criminal Procedure accord with the rights which are guaranteed to an accused person by article 14 of the Covenant. The only exceptions are the provisions of the Law on Criminal Procedure which relate to renewed criminal proceedings and to the costs of criminal proceedings (article 14.7 and 14.3 (f) of the Covenant). According to the provisions of the currently valid Law on Criminal Procedure it is indeed possible under special circumstances to renew criminal proceedings for a criminal act for which the accused has already been acquitted. Neither is the accused guaranteed the free services of an interpreter, since - if the accused is found guilty - he or she is bound also to pay the costs of the interpreter, except where he or she is not able for reasons of insolvency to pay. Since, in accordance with the new Constitution of the Republic of Slovenia, ratified international agreements and treaties take precedence over internal legislation, the courts must in this respect apply directly the provisions of the International Covenant on Civil and Political Rights and not the provisions of the Law on Criminal Procedure. In the new Law on Criminal Procedure, which is now in preparation, this variance from the provisions of the Covenant will be eliminated.

Article 15

43. This provision of the Covenant is embodied in article 29 of the Constitution and also, as a fundamental provision, in the Penal Code.

44. In the Republic of Slovenia there exist, apart from criminal acts, two other categories of criminal behaviour, namely economic transgressions and economic offences. For these two categories of criminal behaviour the principle of legality expressed in article 15 of the Covenant is also valid.

Article 16

45. The legal order of the Republic of Slovenia admits the right of all persons to be recognized everywhere as legal subjects.

Article 17

46. The rights under this provision of the Covenant are guaranteed in the provisions of articles 35 to 38 of the Constitution.

47. The protection of all these rights is guaranteed, inter alia, by the fact that violations of all these rights are sanctioned in the Penal Code as criminal acts against human rights and as criminal acts against honour and good name.

48. The Law on Criminal Procedure determines the conditions under which it is permitted to suspend the inviolability of a person's dwelling and correspondence (as a rule only on the basis of a court ruling).

Article 18

49. The right to freedom of thought, information and belief is guaranteed in the Constitution (art. 41). The Constitution also determines that the State and religious communities are separate, that all religious communities are equal and that their functioning is free.

Article 19

50. The right to freedom of expression, to receipt and dissemination of information and ideas is guaranteed by the provisions of article 39 of the Constitution.

51. In respect of the validity of these rights and freedoms, restrictions which are prescribed in the laws governing this area are in accordance with the provisions of article 19.3 of the Covenant.

52. In the Republic of Slovenia, so-called crimes of thought are not sanctioned. In 1990 (that is, still within the former Yugoslavia), changes were made to the criminal law which had facilitated the prosecution of persons for criminal acts of so-called "enemy propaganda".

Article 20

53. Propaganda for war and incitement to national, racial or religious hatred which would mean the encouragement of discrimination, enmity or violence are sanctioned in the Penal Code as criminal acts. There are no instances of such crime in the Republic of Slovenia, although in the territory of certain other states of former Yugoslavia war is raging; that is, there are armed clashes and other most grave forms of violence, hatred and discrimination on national, ethnic and religious grounds.

Article 21

54. The right to peaceful assembly is guaranteed in the Constitution (art. 42, para. 1). In the same way, restrictions on the above right are defined in the Constitution (art. 42, para. 3).

55. The legal regulation of the right to peaceful assembly and restrictions on the above right are set out in the Law on Public Gatherings passed in 1973. Owing to the inappropriateness and outmodedness of the provisions of this law, a new law is in the legislative process which will be entirely in line with the provision of article 21 of the Covenant.

Article 22

56. The right to free association is guaranteed in the Constitution (art. 42, para. 2). The Constitution also guarantees the freedom of trade unions. According to the provision of article 76 of the Constitution, "the establishment of trade unions, their operation and membership thereof shall be free."

57. The current law contains no restrictions regarding the right to the establishment and membership of a trade union for members of the armed forces and the police.

58. A special Law on the Representativeness of Trade Unions, which the Parliament of the Republic of Slovenia passed in February 1993, determines the method for acquiring the attributes of a legal entity and the representation of trade unions. The law does not impose any temporary or permanent restrictions, nor any other impediments which would otherwise influence the enjoyment of the right to freedom of trade unions.

59. The current law is also in accordance with Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, which was adopted in 1948 by the International Labour Organisation.

Article 23

60. This provision is embodied in article 53 of the Constitution.

61. The basic law, which in addition to family relations brings together the whole of family law and adapts it to suit the changed nature of social relations, and especially the transformation of families and their place in society, is a law on marital ties and family relations which was passed in 1989, and which is the basis for the realization of the provisions of articles 23 and 24 of the Covenant.

62. The family, as a community of parents and children, enjoys special social protection in the implementation of this law, for the benefit of the children.

63. The institution of marriage, as the basis of the family, has a social significance. For the same reason this particular institution is accorded special attention. Society is thus obliged to support future married couples, so that they may prepare themselves for a life together, and through a network of professional services become acquainted with the consequences of their otherwise conscious and freely made decision both in terms of their relations to one another, as well as of the possibility of fulfilling their right to parenthood, and in terms of parent and child relations.

64. According to the cited law, the right to conclude a contract of marriage commences for both men and women from the age of 18.

65. The institution of marriage is the most frequent foundation for a family and is thus a matter of social concern, therefore the method of concluding a contract of marriage is formulated in such a way as to give total freedom of choice to both parties involved, and to make it the result of serious consideration.

66. According to the Law on Marriage and Family Relations, the couple are equal and bound to respect, trust and help one another. The married couple decide jointly on the issue of having children, in which they both have an equal measure of rights as well as responsibilities. Each party freely

chooses his or her own profession and place of work. They decide jointly on common issues, and both work to the best of their ability for the survival and development of the family.

67. If for one reason or another the marriage is unsustainable, one or both parties to the marriage may file for a divorce. If a decision in favour of divorce is reached by the couple in mutual agreement, the court of law must first decide whether there has been adequate provision made for the security, education and maintenance of their children. The judgement by which the court of law divorces the couple also decides on the security, education and maintenance of the children, or it upholds the joint decisions of the couple in the matter.

Article 24

68. The rights of children are established in article 56 of the Constitution, whilst the rights and obligations of parents are laid out in article 54.

69. In accordance with the Law on Marriage and Family Relations, every child has the right to conditions conducive to healthy growth, harmonious personal development and the opportunity to achieve an independent personal and working life. It is the right and duty of parents to provide these conditions, with the support of the State, which provides security for all minors in perpetuity wherever their healthy development is under threat, and where other benefits for the child so demand.

70. The law envisages three forms of social security for children:

(a) Adoption is a special form of security for children, where the relationship between the adopters and the adoptee becomes legally the same as that between natural parents and their children.

(b) Foster parenting is another form of social security for children who are in need of care and education by persons other than their parents.

(c) Guardianship is a special form of social security for children whose parents do not provide for them, which through care, upbringing and education has the aim of developing in every way the personality of the ward and of enabling the ward to have an independent life and work and to develop into an active member of the social community. Guardianship also has the aim of protecting the property and other rights and privileges of the ward.

71. The Law on Social Security of 1992 determines the extent of social security activities, that is, the extent of acts and measures designed to prevent and eliminate social pressures and hardship for individuals, families and groups of the population, as well as grants or assistance intended for those who are unable to provide for their own material security.

72. The Law on the Social Security of Children of 1979 sets out the basic socio-economic relations and determines the principles regarding the organization of social security for children. It incorporates activities and measures which guarantee the conditions for the security of motherhood and for the development, upbringing and social security of children, as well

as providing for work and developmental programmes for the protection of motherhood, children and families, the extent of rights and their method of realization, and the realization of other common interests in the area of the social security of children. Social security activities for children are, in accordance with this law, of special social significance. The financial and material rights realized on the basis of this law are: maternity leave supplements, clothing and baby-care packages for newborn babies, and child benefit supplements.

73. In accordance with the Law on Registers of Births, enacted in 1987, every child's name must be entered immediately after birth in the official register of births for the region in which its place of birth is located.

74. The Law on Personal Names, enacted in 1987, stipulates that each citizen has the right to a name of his/her own and in particular regulates the giving of names to children and the changing of names already given.

75. The acquiring of Slovene citizenship is regulated by the Law on Citizenship of the Republic of Slovenia, enacted in 1991, according to which a child can gain Slovene citizenship by birth, by being born in the territory of the Republic of Slovenia, if its father and mother are unknown, if the child's parents are of unknown citizenship, if the child's parents have no citizenship, or by naturalization, by fulfilling the conditions stipulated by the law. Under certain conditions, a child can gain Slovene citizenship also in the case of adoption.

Article 25

76. All rights and possibilities listed in this provision of the Covenant are guaranteed by the Constitution (arts. 14, 43 and 44) and the new electoral legislation enacted in 1992. The foreign observers present at the most recent parliamentary elections in the Republic of Slovenia (held in December 1992) had no significant objections regarding the manner in which these elections were carried out.

77. Labour legislation gives each citizen the right of employment in the public services of the Republic of Slovenia, under equal general conditions, without discrimination of any kind whatsoever.

Article 26

78. The right to equality before the law is guaranteed by the Constitution (art. 14).

79. The entire legislation in force in the Republic of Slovenia is based on the equality of all citizens, without discrimination, regardless of race, sex, language, creed, political or other convictions, financial status, birth, education, social position or any other personal circumstances.

80. Article 63 of the Constitution contains a prohibition on the encouragement of inequality and intolerance, and any similar acts are determined to be unconstitutional.

81. Any form of discrimination is sanctioned as an illegal act in the Penal Code.

Article 27

82. For both the original national minorities in the Republic of Slovenia, the Constitution stipulates in its General Provisions (art. 6), that "... the State shall uphold and guarantee the right of the autochthonous Italian and Hungarian ethnic communities", while article 64 of the Constitution lists in detail the special rights of all members of the above-mentioned two communities in the Republic of Slovenia.

83. The legislation governing the method by which the special rights of ethnic minorities are to be realized in the field of education and before a court of law, or other statutory bodies, has been assessed by foreign observers as exemplary.

84. The right of all citizens to practise their cultural customs and speak their own languages are ensured by article 61 of the Constitution. In the same way, all citizens have the right to practise their faith (art. 41, para. 1 of the Constitution). These rights are not alienated from any person in the Republic of Slovenia and are not limited in any way by law, nor by administrative measures.